

**City of New Bedford  
Board of Health Tobacco Control Regulation**

**Prohibiting Smoking in Workplaces and Public Places**

**SECTION I - PURPOSE**

The purpose of this regulation is to protect and improve the public health and welfare by prohibiting smoking and the use of nicotine delivery products in workplaces and public places in the City of New Bedford.

**SECTION II - AUTHORITY**

This regulation is promulgated under the authority granted to the city of New Bedford Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22§ (j) which states in part that “[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth.”

**SECTION III - DEFINITIONS**

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

**Board:** The New Bedford Board of Health.

**Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

**City:** The City of New Bedford.

**Compensation:** Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered

**E-Cigarettes:** Any electronic Nicotine Delivery Product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid, or solid nicotine, or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**Employee:** An individual or person who performs a service for compensation for an Employer at the Employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the Employer's Workplace for more than a *de minimis* amount of time.

**Employer:** An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public,

private, or non-profit which uses the services of one or more employees at one or more workplaces, at any one time, including the City.

**Enclosed:** A space bounded by walls, with or without windows or fenestrations, and enclosed by one or more doors.

**Food Establishment:** A Food Service Establishment and/or Retail Food Establishment permitted by the Board.

**Food Service Establishment:** A place where food and/or beverages are prepared and intended for individual portion service, and includes the site at which individual portions are poured and/or provided, that is in a covered area and/or located within a permanent structure. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food and/or beverages.

**Membership Association (Private Club):** A not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a Membership Association for the purposes of this definition, unless individual membership, containing not less than full membership costs and benefits, is required for all members of the association for a period of not less than 90 days.

**Municipal Buildings:** Any buildings owned, operated, leased, occupied and/or under the control of the City, except public school grounds in compliance with M.G.L. c.71 §2A, 37H commonly referred to as the "Education Reform Act, but not limited to City Hall, Council on Aging sites, School Buildings, School Administration Buildings, Police Stations, Fire Stations, Libraries, Maintenance / Repair Buildings, Water Treatment Plants, Sewer Treatment Plants, Health, Parks and Recreational Buildings and office buildings under the control or jurisdiction of the City.

**Municipal Vehicle or Vessel:** Any City owned operated, leased or contracted vehicle or vessel under control of the City.

**Nicotine Delivery Product:** Any article or product made wholly or in part for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine Delivery Product includes, but is not limited to, e-cigarettes.

**Nursing Home:** A facility licensed by the Commonwealth of Massachusetts defined under M.G.L. c.111 § 71.

**Outdoor Service Areas:** Any outdoor space of an establishment, including but not limited to patios, decks and porches that is under the control of the management of said establishment where food

and/or beverages are sold to consumers, served to consumers, or may otherwise be consumed or carried by consumers.

**Outdoor space:** An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

**Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind, including, but not limited to, an owner, operator, manager, proprietor or person in charge of any building, establishment, business, restaurant, Membership Association or retail store, or the Business Agents or designees of any of the foregoing.

**Premises:** The entire property located at the City address of a particular company, corporation, organization, building, establishment, business, restaurant, Membership Association or retail store, including without limitation, any Private Assembly Rooms thereon.

**Private Assembly Room:** That Enclosed area/room within a hotel, motel, restaurant, bar, Membership Association or function hall that is primarily used for rental or use by the public for private functions, parties, banquets or conferences.

**Public Place:** Any building, facility, vehicle or vessel owned, leased, operated or occupied by the City, including school buildings and grounds; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, retail tobacco stores, smoking bars, supermarkets, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public, public mass transit conveyances and indoor platforms and enclosed outside platforms, open meetings of a governmental body as defined in section. 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34 of the General Laws, and licensed child-care locations.

**Retail Food Establishment:** Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes, but is not limited to, supermarkets, grocery stores, convenience stores, and delicatessens.

**Retail Tobacco and/or Nicotine Delivery Product Store:** An establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and/or nicotine delivery products, and paraphernalia, in which the sale of other products is merely incidental and neither possesses nor is required to possess a retail food or a food service permit to be issued by the New Bedford Board of Health.

**“Second Hand Smoke” or E.T.S.:** Environmental Tobacco Smoke. A combination of Smoke released from the burning end of a lighted tobacco product as well as exhaled Smoke.

**Smoking Bar:** An establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products and or nicotine delivery products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products and/or nicotine delivery products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is

open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises.

**Smoking or Smoke:** The lighting of a cigar, cigarette, pipe or other tobacco or non-tobacco product, or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product or ignition of nicotine delivery products designed to be combusted and/or vaporized and inhaled.

**Workplace:** An indoor area, vehicle, vessel, structure or facility, or portion thereof, in which one or more Employees perform a service for compensation for an Employer, and other Enclosed spaces rented to or otherwise used by the public where the Employer has the right or authority to exercise control over the space.

**Work space or work spaces:** An enclosed area occupied by an employee during the course of his employment.

#### **SECTION IV - SMOKING PROHIBITED**

**A.** It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace and/or work space.

**B.** Smoking is hereby prohibited in the City in accordance with M.G.L. c. 270, §22.

**C.** Pursuant to M.G.L. c. 270, §22(j) smoking is prohibited in all Public Places in the City also prohibited hereby in membership associations, nursing homes, retail tobacco product and/or nicotine delivery product stores, Smoking Bars, Outdoor Service Area portions of a Food Service Establishments, City outdoor spaces including playgrounds, parks, beach/pool areas, outdoor athletic fields, **and within twenty-five (25) feet** of all entrances, exits, operable windows and air supply intakes at municipal buildings, *except that this shall not apply to an individual transiting through such twenty-five (25) foot area or to an individual approaching an entranceway with the intention of extinguishing a tobacco product.* Smoking is also prohibited during the private charter or rental of a limousine, bus or van where a driver is provided as part of the charter or rental. All outdoor City community events held on municipal property must be smoke-free and adequate “No Smoking” signs approved by the Board of Health must be posted at the event (effective November 15, 2012).

**D.** The use of Nicotine Delivery Products, including, but not limited to, e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22.

#### **SECTION V - RESERVED**

#### **SECTION VI – POSTING OF NOTICES**

Consistent with M.G.L. c.270, sec. 22 (g) (4), the owner or his/her Business Agent, having control of the Premises upon which Smoking is prohibited by and under the authority of this regulation, shall post notices conspicuously, so that the signs are clearly visible to all Employees, customers, or visitors while in the establishment, at all points of entry and in every area upon the Premises which state “No Smoking” or that this is a “Smoke-Free Establishment”, or that display the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) and signs approved by the Board of Health must be posted at community events (Effective April 1, 2012).

## **SECTION VIII - CONFLICT WITH OTHER LAWS, ORDINANCES OR REGULATIONS**

Notwithstanding the provisions of the foregoing Section IV of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other laws or regulations, including the Smokefree Workplace Law M.G.L. c.270, sec. 22, so as to permit Smoking in areas where it is prohibited by that law or such other fire, health or other law or regulation.

## **SECTION IX - PENALTIES**

**A.** It shall be the responsibility of the Employer to provide a smokefree environment for all Employees working in an Enclosed Workplace. It shall be the responsibility of the permit holder/owner, or his/her Business Agent, to ensure compliance with all provisions of this regulation.

A permit holder/owner, Business Agent or other Person in control of any Workplace, Public Place, Food Establishment or Membership Association governed by this regulation, who violates any provision of this regulation, shall be subject to the following:

1. A fine of one hundred dollars (\$100) for the first violation.
2. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200).
3. In the case of a third violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) and, if applicable in the case of a permitted Food Establishment, suspension of the establishment's permit for seven (7) consecutive calendar days.
4. In the case of a fourth violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) and, if applicable in the case of a permitted Food Establishment, suspension of the establishment's permit for thirty (30) consecutive calendar days.
5. If applicable, the Board shall provide written notice to a permit holder/owner, or his/her Business Agent of the intent to suspend or revoke a "Food Establishment Permit" consistent with the Permit Policy of the Board adopted June 23, 2003.
6. If applicable, a permitted Food Establishment will be closed and prohibited from operating during such time that the establishment's permit has been suspended or revoked for a violation of this regulation.

**B.** If an owner, manager or other Person in control of any permitted Workplace, including Food Establishments and Membership Associations governed by this regulation violates this section repeatedly, or demonstrates egregious noncompliance with this regulation, the Board may suspend or revoke its license to operate and shall send notice of said suspension or revocation to the City Licensing Board and the Massachusetts Department of Public Health.

**C.** Each day on which any violation of these Tobacco Control Regulations exists shall be deemed to be a separate violation.

**D.** Violations of this regulation may be found upon sufficient evidence of Smoking, including but not limited to ashtrays and other smoking materials, extinguished cigar and cigarette butts, etc., and shall not be limited to the discovery of actively burning tobacco and non-tobacco products in a Workplace, Public Place, Membership Association or Food Establishment.

## **SECTION X – NON-CRIMINAL CIVIL DISPOSITION**

Whoever violates any provision of these Tobacco Control Regulations, the violation of which is subject to a specific penalty, may be penalized by the Non-Criminal Method of Disposition as provided in M.G.L. c.40, sec. 21D or as outlined in M.G.L. c. 270, sec. 22 or by filing a criminal complaint at the appropriate venue.

## **SECTION XI - ENFORCEMENT**

**A.** The Board and its designees shall enforce this regulation.

**B.** Enforcement may include, but not be limited to, periodic, unannounced inspections of a Workplace, Public Place, Membership Association or Food Establishment subject to this regulation.

**C.** Any Person who desires to register a complaint under this regulation may do so by contacting the Board.

## **SECTION XII - SEVERABILITY**

If any provision, clause, sentence, paragraph or word of this regulation or the application thereof to any Person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared severable.

## **SECTION XIII - EFFECTIVE DATE**

This regulation was initially adopted on August 17, 1999 effective January 3, 2000; amended on April 4, 2000 effective June 11, 2000; amended on October 19, 2004 effective January 1, 2005; amended on November 3, 2011 and effective January 1, 2012. This regulation was further amended on February 16, 2012 and shall be adopted March 1, 2012.

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